

ARIZONA STATE PARKS BOARD
1300 W. WASHINGTON STREET
PHOENIX, AZ
NOVEMBER 10, 2003
MINUTES

Board Members Present:

Suzanne Pfister, Chairman
Elizabeth Stewart
William Porter
Gabriel Gonzales-Beechum
Mark Winkleman

Board Members Absent:

John Hays
William Cordasco

Staff Present:

Kenneth E. Travous, Executive Director
Jay Ziemann, Assistant Director, Partnerships and External Affairs
Mark Siegwarth, Assistant Director, Administration
Debi Busser, Executive Secretary
Sue Hilderbrand, Acting Chief of Grants

Attorney General's Representative:

Joy Hernbrode, Assistant Attorney General
Patricia Boland, Assistant Attorney General

A. CALL TO ORDER - ROLL CALL

Chairman Pfister called the meeting to order at 10:32 a.m. Roll Call of Board Members indicated a quorum was present. Chairman Pfister noted that Board Members John Hays and William Cordasco were out of town and unable to attend this meeting.

Mr. Porter stated that it struck him that, even though there were a number of people present who wished to be heard, the Board should perhaps first hear from its counsel in order to have a better idea of what the playing field looks like. He therefore moved that the Parks Board go into Executive Session to receive advice of counsel.

Mr. Winkleman seconded the motion. The motion carried unanimously. The Board went into Executive Session at 10:35 a.m.

Chairman Pfister reconvened the meeting at 10:51 a.m.

B. PUBLIC COMMENT

Chairman Pfister stated that the Board would hear from the public and staff on the sole issue before the Board.

C. PARTNERSHIPS - The Board and staff will discuss and the Board may take action on the following:

1. Board Action

- a. Reconsider amending the Scope of Work for Lake Havasu City State Lake Improvement Fund (SLIF) Grant #780121 for London Bridge Beach Acquisition** – Staff does not recommend amending the scope of work for SLIF grant #780121 for the Lake Havasu City London Bridge Beach Acquisition project.
- b. Consider the Disposition of SLIF Funds which may include a special Grant Cycle or other possible uses.**

Mr. Porter suggested that the legal counsel to the Board explain the legal advice under which the Board is functioning.

Chairman Pfister asked legal counsel the question of what legal authority the Parks Board has to amend the scope in the way Lake Havasu City has requested.

Ms. Hernbrode responded that it is counsel's advice that, while the Board may make amendments to their grant contracts, this request is too different to qualify as an amendment and the better legal decision is to not approve this as an amendment and to perhaps see it later as another grant applicant.

Chairman Pfister asked if counsel's analysis is based on the competitive grant statute and whether the Board may be in violation of the statutory requirements.

Ms. Hernbrode responded affirmatively.

Chairman Pfister noted that even though the Board has authority under its policy, it is important to note that the policy was written prior to the authorization of the state law on competitive grants. Approving the amendment exposes the Board to penalties.

Ms. Hernbrode responded affirmatively.

The Honorable State Senator Linda Binder, representing District 3 (Mohave County and parts of La Paz and Coconino Counties), addressed the Board. She thanked the Board for taking time from their busy schedules to hold this special meeting. Everything she was going to say is moot after the Attorney General's Office offered this opinion. However, she still would like to reiterate this because she really fully believes that this does need reconsideration. She stated that a meeting was held in her office right after the Board met in Benson with Mr. Ken Travous (State Parks Director), Mr. Mark Winkleman (State Land Commissioner), and herself to review all of the issues. She fully believes that this project is contiguous and that it does meet the criteria of the land being contiguous especially because it is a man-made channel. She also believed the State Parks Director told them at that meeting that it was within the Board's authority to be able to give them this grant. Lake Havasu originally only asked for \$1 million but was given \$5 million. She believes it was with the full understanding of the State Parks Director that the legislature was sweeping everything and that if this money was not appropriated the legislature would have taken it. It is the same today. The legislature

is in Special Session right now. The State Appropriations Chairmen are still looking at every angle and every single fund because the state is facing a \$9 million deficit going into this coming year. She believes the same thing still holds. She believes that there were a lot of misrepresentations made by the State Parks (ASP) Director to the City Council. That is why she is asking for reconsideration at this meeting. She believes the City Council had a certain comfort level that it was within their purview because of this land being contiguous that it really was a part of the same project and, thus, could be looked at and awarded. She still has that same feeling that it is within reason and that this property is just an extension of that project and is not a separate project. Even though she is not an attorney, she would still like to look at the fact that this could either be a full change or it could be a partial change that the Board could adopt.

Senator Binder added that she is not sure she could argue against the Attorney General's office. She noted that there is a second attorney from the Attorney General's Office present and asked if that attorney holds the same opinion.

Ms. Boland responded that she does and that she is Ms. Hernbrode's supervisor.

Senator Binder stated that she appreciated Ms. Boland being present and that it looks as though there is a need for some innovative thinking. She added that she appreciated her talks with some of the Board members who said they would truly like to see this project go through and that there may be a six-week window before going into session. She is bothered by the fact that this does need to be looked at by JCCR. She happens to know that the Appropriations Chairmen are looking at everything. She believes that if this money does not get appropriated here today it will be a moot issue and that this money will indeed be swept. She noted that she championed not sweeping the SLIF funds over the last few project cycles. She has done her utmost to ensure the fund be kept intact. She hoped that, while in Executive Session, the Board was able come up with some creative thinking in how to resolve this. A tremendous amount of time has been spent by the City's staff, the Board's staff, and the State Land Department's staff. Plans are ready to go that benefit our tourists, our city, and certainly will generate money that will go into the ASP's coffers as well as the State Land Department to benefit education. We need to keep these projects moving. They are very worthy. She will certainly adhere to what the Board advises today. She is sure the Board has looked at the best path to follow in the next couple of weeks. She thanked the Board for their time and consideration.

Chairman Pfister thanked Senator Binder for her comments.

Mr. Bob Whelan, Mayor, Lake Havasu City, addressed the Board. He thanked the Board for agreeing to hold this special meeting. This project is very important to the citizens of Lake Havasu. Repurchasing their state parks from the State Land Department is a very high priority of their Council. It is probably one of their highest issues. They will obviously follow the Board's advice and will resubmit this project and hope that the Board will give it careful consideration. Lake Havasu City is the homeport for about half of southern California. A lot of the funds that come into SLIF (approximately 40%) come from Lake Havasu City. They are a contributor and they host these boaters. They have a lot of expenses. They promote tourism throughout the country, but particularly in terms of boating from southern California. They look

forward to the Board's help with the project of reacquiring the beach because that beach is the keystone to their tourism.

Mr. Winkleman noted that some of the questions he has might have been covered at the last Board meeting that he was unable to attend.

Mr. Winkleman asked if there was anything in the original application that referred to this particular property. He asked for help in understanding the City's thinking as to why the former application would have applied this.

Mayor Whelan responded that, from the point of view of the City, their beachfront was one beach. It went from where ASP's Contact Center is now all the way around the island and up to the north through Windsor Beach State Park and Campbell Cove. They don't really differentiate. When State Lands acquired the property, for administrative purposes they drew some lines on it. In Lake Havasu City they think of their beach as being one piece.

Mr. Winkleman noted that, from a legal standpoint, there's a continuity factor.

Ms. Hernbrode responded that her understanding from the maps Lake Havasu presented at the last Board meeting, they are speaking now of their beach property as one parcel. When they applied for the grant, they applied for London Bridge Beach – not for beachfront acquisition; not for a wider scope. Traditionally, governmental agencies acquire properties in chunks. That's the case with quite a few of the grant cycles; the Board does it as well. Her understanding of the map is that the shoreline runs London Bridge Beach, the canal, Rotary Park, and then this parcel. There is quite a bit of difference. These properties are referred to as different properties.

Mr. Winkleman asked if the fact that this land doesn't physically touch the London Bridge property is a legal description or an interpretation – or whether it matters at all.

Ms. Hernbrode responded that she believed that is part of what the Board should weigh in deciding whether or not this could be an amendment.

Ms. Boland added that there is no specific requirement that it touch. One is typically called, "Body Beach" and one is called, "London Bridge Beach". Even if they were adjacent, their advice may be the same because the application was for London Bridge Beach. Everyone knows which beach that is. Their advice might be the same even if it were adjacent to Body Beach.

Mr. Winkleman noted that there will not be another alternative that will be wholly satisfactory to everyone. He does not want to dismiss this idea as something to be conceded or not looked at. He noted that Senator Binder referenced the original grant request being for \$1 million; it was increased to \$5 million. He asked for background on that issue.

Chairman Pfister noted that, in addition to hearing from Lake Havasu City representatives, she also wanted to hear from staff from an application standpoint.

Mr. Stan Usinowicz, Lake Havasu City Community Development, addressed the Board. He stated that the original grant request was for \$1 million, yet the Board granted \$5

million. At the time of the meeting it was feared that the remainder of the money would be swept by the legislature, so the Board approved the \$5.1 million to Lake Havasu for the acquisition of shoreline.

Chairman Pfister stated she wanted to clarify since she did not believe that was an accurate statement. The grant was a reimbursement. The appraisal had not been done on this parcel. Because the Board did not have the full price, it allowed up to \$5.1 million on this parcel. She asked staff if that was correct.

Ms. Hilderbrand responded that at the time this grant was reviewed, there was a 20% cap for every grant application. An applicant could only be awarded 20% of the available money. At that time, the policy was a bit different in that it was 20% of available new money. At that time, the available money was 5 times \$1.19 million. Staff and AORCC recommended to the Parks Board that \$1.19 million be awarded (exactly 20% of new money).

Mr. Travous pointed out that that was Board policy and not statute.

Ms. Hilderbrand agreed and noted that the policy has changed even a little bit more. At that time, as the Chairman pointed out, there was a lot of money left over. There was a competitive assessed market value on that property for between \$3.5 and \$5.1 million. There was so much money left over that the Board said to shore up the money and make it all available to Lake Havasu with the understanding that the only reimbursement would be the real price of that parcel.

Chairman Pfister noted that it was for that one parcel.

Ms. Hilderbrand agreed and stated that the Board did not say, "Here's \$5.1 million, " but they said, "We'll make this available to you; we'll reimburse you for the final appraised value."

Ms. Boland noted that the property had not been appraised at that time.

Mr. Winkleman noted that this was done with the knowledge that the parcel would be appraised and that it would be the only parcel appraised at that time.

Ms. Stewart responded that that was all that was in the application.

Chairman Pfister added that, typically, if there is unused money it is returned to the fund. Either applicants have not spent it or appraisals did not come in at the level requested. That money is not automatically kept with the applicants. It comes back to ASP.

Mr. Winkleman asked if the \$1.9 million was what the City requested or if it was the 20% cap.

Ms. Hilderbrand responded that it was the 20% cap and it was actually \$1.19 million. That is what staff recommended and that is what AORCC recommended. From reading the file, Lake Havasu City said they were OK with the cap.

Ms. Stewart stated that it was her understanding from reading the City Council Minutes that the original application was filed with ASP in December of 2000. It wasn't until February 2002 that the City decided to purchase Body Beach, and part of the reason for that decision was the fact that it had recently been closed and the public no longer had access. In the June 2002 Minutes, the City Council decided to file an application with the State Land Department for the immediate purchase of Body Beach. She believes that it was not part of the original application to the Board because at that time it was under lease to another party who had another 8 years on their development lease. While it may have been something that they wanted to sometime in the future acquire, it was not even something that was discussed.

Mr. Winkleman asked for the City's perspective on the background.

Mayor Whelan responded that the mandate from the people to the City Council as elected officials is to acquire all of the beach and make it available for free public access. They have subsequently tried to do just that, either through their zoning procedures or through purchases. The reason they jumped on Body Beach when they did was because there was a lease there, a window opened up where they could get a portion of that lease, and they jumped on it. There is only one shot at acquiring beachfront. If it is developed, then it is lost. When it became available the Council immediately authorized staff to make an application to get it. They did the same thing with another piece. They have an application that was not being accepted for Campbell Cove, a half-mile of beach on the north end. If they have an opportunity for a beach, their citizens would string them up if they fail to take advantage of any opportunities.

Mr. Travous stated that the sequence was: \$1.1 million (the 20% cap) came to the Board with the recommendation of staff and AORCC; the Board increased it from \$1.1 million to \$3.4 million.

Chairman Pfister noted that it was "up to" based on the appraisal.

Mr. Travous agreed. The Board went beyond its policy. The Board got rid of the 20% policy and then went to \$3.4 million. Then, during those discussions, it was recognized that there was still no appraisal and it could come in at from \$3.1 to \$5.1 million. Because the money was there, the Board said rather than having Lake Havasu come back to the Board for more money, just put the grant at \$5.1 million. No one else was applying for that money.

Mr. Winkleman asked if there were other applicants at that time.

Ms. Hilderbrand responded that there were 21 applicants for that grant cycle and 21 grants awarded.

Mr. Travous added that no one went unfunded in that SLIF grant cycle.

Mr. Winkleman asked when that grant cycle occurred.

Ms. Hilderbrand responded that those grants were awarded in September 2001.

Mr. Winkleman asked what has happened in the meantime.

Chairman Pfister responded that there have been no SLIF grant programs since then because the fund has been swept by the legislature. No SLIF money has been awarded in the last two grant cycles because there has been no money to award.

Ms. Stewart added that staff do not even request any SLIF applications because there is no money to award.

Mr. Winkleman noted that this money comes back now because the sale has taken place, the money was set, and now the Board knows what they needed.

Chairman Pfister added that in some cases it will take a year or two before the Board gets the unexpended funds. Sometimes there is a delay in the grants. It may take a city three years to get through their project and they won't know that they have unexpended funds until the end. Sometimes there is a two- or three-year lag between the time the money is actually granted and the time any unspent money comes back. It is all reimbursements.

Mr. Winkleman asked what happens now that the money is sitting here.

Chairman Pfister responded that typically what happens is that it sits "in the kitty" until the next grant cycle, at which time it would be spent down. It would be lumped in as unreimbursed or returned funds. The new grants are awarded based on those funds being added into the mix. All things being equal, this money would be held over for the next grant cycle, assuming more SLIF money came in and it was not raided.

Mr. Winkleman noted that, given the current state of affairs with the state, there is no anticipation that there will be SLIF funds for grants any time soon.

Chairman Pfister responded that she felt that was a good assumption.

Mr. Winkleman asked if there is any legal obligation to do anything with that money right now. It is up to the legislature to take action.

Chairman Pfister responded that that is correct. She noted that the Board can take action. One option would be for the Board, knowing the money is there and it could be a use-it-or-lose-it situation, to have a shortened grant cycle to award the money with the hope to encumber it. A case would have to be made to the legislature to keep it from being swept.

Ms. Hernbrode noted that the money is still obligated until the City closes their grant. They have not sent staff a letter stating they are finished and are closing the grant.

Ms. Stewart noted that the appraisal on this parcel is still outstanding. At the last meeting the Board was told that it had to get its own appraisal.

Ms. Hernbrode responded that one requirement is that staff reviews the appraisal and then reimburses based on that appraisal. Staff are still working that out. At this time, no money has been transferred to the City. Technically speaking, the entire grant award of \$5.1 million is still obligated. The legislature can do what they wish. That money is technically obligated; it is technically earmarked for Lake Havasu City.

Ms. Hernbrode added that staff cannot close the grant until the appraisal requirement is satisfied.

Chairman Pfister noted that the Board could not do a grant program right now. She asked if the Board were to do a shortened grant cycle and applications were received end of January or early February, would the Board have an indication of how much money is left.

Ms. Hilderbrand noted that that raises a very good question. Staff would need to figure out how to quickly satisfy the appraisal review requirement. Then a letter must be received from the City to close that account. That letter would release the money for the next set of grant cycles. A lot of things have to happen very quickly. A lot of moving parts need to be coordinated.

Mr. Winkleman asked if Lake Havasu has paid the Land Department yet.

Mayor Whelan responded that the State Land Department has the City's million dollars. So far, no SLIF funds have been released to the City.

Mr. Winkleman noted that the appraisal is just a mandate of the Land Department that it cannot sell for below appraised value. The property has been sold. He asked if the only relevant information is what was bid at the auction and how much liability the City has incurred.

Ms. Hilderbrand responded that part of the requirements is that the appraisal must meet the national standard. The way staff ensure that that has been satisfied is that when the appraisal is received, it is sent to ASP. ASP then goes out to have it reviewed. When staff receive the OK, they tell the applicant to go to auction. Sometimes it goes to auction before the appraisal has been reviewed. Staff have received the appraisal; it has been reviewed. There are issues that need to be worked out. Staff have not received a stamp of approval from the reviewer. Staff have not been assured that the appraisal is consistent with standards. It is an administrative issue and staff are trying to figure out how to make it work.

Mr. Winkleman asked if this process needs to be completed before staff reimburse Lake Havasu.

Ms. Hilderbrand responded that that is correct.

Mr. Travous added that there are more than occasional issues with the appraisal. The review appraiser has come back and said that there are some major problems with the appraisal, one being that there are no comps. Staff have to figure out how to go back and make sure the numbers are good. The other caveat on that is that the Grant Manual says that the Board cannot pay more than the appraised value. What could happen to make this more complicated is if the appraised value (once it is reviewed) comes back at less than what they bid, the Board can only pay a bona fide appraisal. The City might end up paying more than the Board can reimburse.

Ms. Stewart added that sometimes the land at these auctions is sold for more than its value. The Board will only pay for the value. The Board pays for the lesser of the two

amounts. The Board would never pay more than what was actually paid at the auction and it would never pay more than what the appraisal comes out to.

Mr. Travous added that he went to Lake Havasu to meet with the City officials a few weeks ago and discussed this issue. They are well aware that there are major problems with the appraisal.

The Mayor stated that the appraisal the City paid was the State Land Department's appraisal. That was the exact amount they paid.

Mr. Winkleman noted that until that issue is resolved, the money does not change hands. The \$5.1 million is still encumbered.

Chairman Pfister noted that last year the legislature raided OHV obligated funds. That issue was resolved through some heavy negotiations.

Mr. Siegwarth responded that staff paid the OHV money that had already been spent by the grantees. In the OHV program, approximately \$2 million in grants had been given out. The grantees had spent about \$1 million. Staff got the \$1 million to pay them what they had already spent. Staff are still requesting the other \$1 million so they can complete their projects.

Chairman Pfister noted that typically the Board and staff have gone to the legislature and said, "This money is obligated."

Mr. Siegwarth reported that he must call the legislature's budget analyst with the amounts of money that is obligated this week. While the \$5 million is sitting in the account, staff will tell the legislature that this money has been obligated for this purpose.

Chairman Pfister suggested a scenario that if this grant reimbursement slows down, the \$5 million continues to stay obligated through the legislative session and continues to be considered obligated; the Board stands its ground with the state legislature about maintaining the obligated funds in the grant program and that they not be swept, whatever is left could be offered in a SLIF grant program. There would have to be a huge caveat that while there may not be a lot of money, applications would still be taken for it. A regular grant program would be conducted with the understanding that whatever the unreimbursed funds are become unencumbered (unobligated) and can be put back in the grant program.

Mr. Winkleman noted that it would be fortuitous if resolution of this issue occurred at the same time the grants were awarded because it minimizes the downtime.

Mr. Porter noted that this gets the Board away from the problems discussed earlier of shortchanging timeframes too much.

Chairman Pfister added that it minimizes the chance of the money being swept. She believes it is incumbent upon future Boards to lobby heavily to ensure that the legislature does not sweep money that is obligated for grants programs. She believes that case was made effectively last year.

Mr. Gonzales-Beechum noted that it appears there has been a delay in getting the appraisal finalized. He asked what the reason for that was and if there is a way to correct it and speed up getting the final appraisal.

Ms. Hilderbrand responded that the appraisal review does not have issues with the numbers. It says that there is not enough information to justify the numbers. It requests more information. There is no dispute as to what the appraised value is; there is just not enough information to endorse the price and assure that it abides by the standards.

Chairman Pfister noted that one of the hallmarks of the Board's grants program is the level of detail. These programs have been subject to the Auditor General's review and have come through with flying colors. She prides this Board and the history of this Board for the fact that these grants programs have been run very fairly and very accurately. There is a history of well-run grant programs.

Mr. Gonzales-Beechum asked if the person aggressively working on this can get it finalized and asked how it will work.

Ms. Hilderbrand responded that ASP is the distributor of the money. The way staff are certain that the appraisal is good is through a review. The reviewed appraisal came back as not meeting standards. Staff's responsibility is to say that it doesn't meet standards and request Lake Havasu City to bring it into compliance with standards. At this point, Lake Havasu City is working with the Land Department in order to come up with an appraisal that satisfies the reviewer.

Ms. Stewart noted that it is not really a matter of the Board's staff not taking action; the people who review the appraisals are not employed by the Board or the Land Department. Staff are dependant upon receiving information.

Mayor Whelan stated this is different from what he thought. When Lake Havasu went to the auction, they were prepared to spend \$5.1 million if necessary. There were other bidders at the auction. When the land is put up for auction other bidders could have bid \$4-\$4.5 million. They were prepared to spend the whole \$5.1 million.

Chairman Pfister responded that the City had the Board's authorization to do that on that parcel.

Ms. Hilderbrand noted that in the contracts and in everything that has been produced and distributed it states that the Board cannot legally give more than the appraised value because of the Gift Clause. The contract, the Administrative Guidelines, and letters on file all say to please send staff the appraisal for review. Unfortunately, this parcel went to auction before staff received the appraisal. The review came out after the auction occurred. While that does happen, it is not the normal process.

Chairman Pfister asked if it is staff's sense that the review can be resolved.

Ms. Hilderbrand responded that she did not think it would be a problem.

Mr. Winkleman asked if there is anything else, from the City's standpoint, that could shed light on the application that was made and why it should apply to Body Beach as well.

Mr. Bruce Williams, City Manager, Lake Havasu City, addressed the Board. Mr. Williams stated he could probably shed more light on this than the Mayor, who has only been involved since January. This grant was approved 2.5 years ago. He did not attend either the AORCC or Parks Board meetings. His staff did attend the Board meeting. After the Board approved the \$5.1 million they immediately called him on the phone and told him that it was like Christmas down here. They asked for \$1 million and got \$5.1 million.

Chairman Pfister noted that the Parks Board would not have couched it that way.

Mr. Williams responded that they did. The first thing that dawned on him was that their community was actively involved in acquiring as much public shoreline as possible. They have three applications pending before the State Land Commissioner right now (Black Rock Cove, Campbell Cove, and Body Beach). The history for these projects go back many years. Their elected officials, at least during his tenure, have had a major goal of acquiring as much of that property as they could. The reason Body Beach was slow to roll around was because of a planning lease by a private party. He began working with that party eight years ago in an attempt to get the City involved as a partner in Body Beach projects. The State Land Commissioner is completely aware of the City's history in that regard. It did not get formalized until about two years ago when the City got a commitment from the private property owner that he would be willing to break off a chunk of that parcel and make it available for public improvement and boating purposes.

Mr. Williams stated that shortly after he learned about the grant award, he made a phone call to the ASP Director and told him that the City will not be able to use all of that money for the acquisition of this particular piece of property. He asked to come down and discuss the possibility of extending that to some of the other areas that the community has an interest in acquiring. They did meet privately on two occasions where he identified for the Director what the community's objectives really were. They even made field visits and stood on Piccadilly Point.

Chairman Pfister asked how the City Manager knew they wouldn't spend the \$5 million.

Mr. Williams responded that they do their homework and that they had market appraisals done on the property. Frankly, when that appraisal came in it was a bit higher than what they thought it would be based on prior market analyses. However, they stood on Piccadilly Point and one can get the general idea of what the City is attempting to do. It's actually basically improving all of the beachfront. His recollection is that Mr. Travous felt that was an appropriate thing to do, not only for those individuals who visit the community but also for the community's attempt to preserve it so it is open and available to the public.

Mr. Williams stated that the meetings he had with Mr. Travous privately down here were basically to try to shore up at least the staff's support for them to continue on and

use whatever remaining money might result from the purchase of this property on the property across the channel. They were encouraged by his remarks. He was real positive. He said it was something he could support; the City would just have to go through the process – go to AORCC and then on to the Parks Board. That was the same message that Mr. Travous delivered to them in a meeting with him shortly after the Mayor was elected. The Mayor, the City Attorney, and he had a meeting with Mr. Travous and discussed the continuing interest their community had to expand their park in this area. They were encouraged at that time, even though Mr. Travous threw in a caveat that it all depends on what the legislature does with the agency's operating needs and whatever else they may choose to do concerning funding for the agency. Prior to that he said he really wanted to help the City and that he believed it could be done through an amendment process. That was Mr. Williams' understanding of the meetings. He then went back and reported these things in a very positive way to the people he works for and then comes to find out that the Board is a bit apprehensive because they think it might require violating a statute and getting themselves convicted of some crime for allowing a grant to be used quite frankly the way it was intended to be used. This money is not, as adopted by the legislature, to be used for operating expenses for the park system. It was intended to be used for improvement for boating and recreational opportunities for all Arizonans. This is the history that he is aware of. He is the culprit who let their community believe that the Board was willing and able to help them. It was based on advice that he had received from the Director of the ASP, whose recollection of the conversations may be somewhat different. However, Mr. Williams always left the meetings excited and happy and reported these things. It is real difficult, then, for him to turn around and explain to the people he works for why he said those things.

Mr. Winkleman asked if there was other ASP staff involved in these meetings.

Mr. Williams responded that no, actually the one meeting he had with the Director was private and the second meeting was also attended by the newly-elected Mayor and the City Attorney. Mr. Williams stated he had numerous telephone conversations with Mr. Travous.

Mr. Winkleman asked if any other ASP staff were involved in the grant program.

Mr. Williams responded absolutely. The City's staff works very closely with the ASP staff. They receive advice all through this process.

Mr. Winkleman asked if the City received advice from other ASP staff stating this amendment was proper.

Mr. Williams responded that they did.

Mr. Winkleman asked if anyone would like to elaborate on that.

Mr. Usinowicz responded that they went back to AORCC after they found out how much money London Bridge Beach would be, based on the City Manager's direction, to see if they could have an amendment to the London Bridge Beach project. It hadn't gone to auction at the time. They were told by AORCC to wait to see what London Bridge Beach comes in for and how much the City would have to pay and then come

back to discuss the amendment. They were operating on the amendment process through that AORCC meeting. They then purchased London Bridge Beach and he requested that they come back to the ASP Board.

Mr. Winkleman asked when this occurred.

Mr. Usinowicz responded that it was in April.

Chairman Pfister noted that the Board has not had a grant cycle since. There have been no SLIF grant cycles.

Mr. Usinowicz stated that they were always under the impression that the amendment was the way to go. They continued on that path. Then, prior to the last Board meeting, they received a staff report (on the Monday prior to the Board's meeting on Thursday) that staff was against the amendment process and the City needed a proposal.

Mr. Winkleman asked if staff had ever previously told the City they were in support of the amendment process.

Mr. Usinowicz responded that they did not. They never received any direction from staff that they couldn't do that or that another proposal was necessary or that a new grant was necessary.

Mr. Winkleman asked if staff ever told the City it could do an amendment or did they just not comment at all.

Mr. Usinowicz responded that he did not know if they commented at all.

Chairman Pfister stated that it is her sense that everyone waits until after the appraisal because before that they are dealing with "what ifs".

Ms. Hilderbrand noted that everyone is giving his or her own history. The administrative history is that staff received a letter in March that basically said the City would like to have this amendment go before AORCC. When a participant wants to amend an award to this degree, staff know it cannot be done administratively. The normal process is for staff to put them on the Agenda for the AORCC meeting. At that meeting staff did not make a recommendation either for or against this amendment. At that time AORCC said they did not want to do anything yet because they did not know what amount of money was involved. As the summer progressed and staff got into the details of this project, they realized that this is not even legal. It is an eligible project if an application were submitted. It is all eligible. But staff realized that the amendment isn't legal. By the time it got to AORCC in October, staff said they did not support the amendment for that reason.

Mr. Winkleman asked if, at the time it went to AORCC, any one was focused on it being a problem, a different property, or that it wasn't adequately described.

Ms. Hilderbrand responded that when it went to AORCC last spring staff did not get involved in it because there wasn't enough information. In looking over her predecessor's notes and in the file, staff found a lot of letters that said staff did not have enough information from the City and requested various kinds of information. That is

how staff got the City Council's report. Staff did not know anything about this project. The City wanted to go forward. Staff agreed with going forward but did not make a recommendation. It really was a matter of there not being enough information to see how much this project would cost. AORCC recognized that and decided to hold off. That's when staff got into more of the particulars.

Chairman Pfister noted that the Board would lose its quorum at Noon. If someone wanted to make a motion it would need to be done before then.

Ms. Stewart asked if staff could put into perspective exactly what was requested in the original application. She asked if there was any discussion about this grand plan of the entire beachfront property or shoreline property in terms of the Scope. The statute says that there has to be a description of the nature of the grant project when they apply. The Participant Agreement, which is sent out, says that a project means an activity or series of related activities which are designed in the specific project's scope of work and which result in a specific product.

Ms. Hilderbrand responded that the original application was for the purchase of 18 acres of London Bridge Beach.

Ms. Stewart asked if there was any discussion of Body Beach or any other properties at that time.

Ms. Hilderbrand responded that the application was just for the purchase of London Bridge Beach.

Chairman Pfister asked the Director for his recollections.

Mr. Travous responded that he still supports buying this property for the public. There were discussions that were in generalities. He does not recall whether the discussions were on this particular property or not. He will give the City the benefit of the doubt that they were. He still supports the idea that that is a key piece of property for the City to have. But, the statute did not become apparent to staff until this summer, even though it was passed some time ago. Without the statute, he could argue that the Board has the ability to look at this issue differently, and would probably do so. He has given them his verbal support that it's a good project and he still believes that.

Mr. Travous stated that it appears to him that not rectifying this problem right now may be to the benefit of everyone with the exception that the City has \$1 million it has put into the project that it has not been reimbursed for. Until such time as that is done, the money is encumbered under those auspices and could remain so. The appraisal still concerns him in that staff do not know what will be paid out. He recommended that if the Board are not feeling that they need to resolve this issue right now, there may be some benefit to everyone concerned to wait until this appraisal is approved, have the Board review that appraisal as one more check. Staff do not want the problem with the appraisal compounded right now. The City and the Board are in a better position by not moving so quickly right now.

Chairman Pfister noted that keeping it obligated through the legislative session is one option.

Mr. Porter added that it could go out at the same time to a grant cycle conditioned on the fact that there may not be any funds at all. Bids could be invited in the event there are funds and go through the grant cycle so that at least the grant applications would all be in and processed. If, in fact, funds become available, then the Board can make the decision as to how they would be handled.

Ms. Stewart responded that the only problem with that is that there is a lot of work involved in applying for a grant. If the Board announced that it doesn't believe it has any money, or there isn't any money available, it would have been a lot of work for possibly nothing. People know from reading the newspapers that these funds are being swept. The Board will end up with most of the people feeling that they shouldn't waste their time. At the very least, staff need to notify people that there is a possibility of this money returning. Otherwise, people will believe there is no money.

Mr. Porter agreed with Ms. Stewart's statement. The Board needs to let people know it may have some funds becoming available. In the event that funds become available, the Board wants to have a grant program. If people want to take the time to put in for those possible funds, it is their choice.

Ms. Stewart responded that she felt the Board needs to say it anticipates approximately so much being returned.

Chairman Pfister noted that the Board doesn't even know that yet.

Mr. Winkleman noted that the Board appears to be heading off in the direction of a grant cycle. Before going there, he noted that the Board just spent a fair amount of time going through the history from the City's perspective. He noted that the Assistant Attorney General has listened to the City say they treat this as their riverfront, they have a mandate from their voters to acquire as much as possible, they had several meeting with the Parks Department where it was suggested everything was OK, they were told by AORCC not to do the amendment. This is not a black-and-white legal decision. He asked, after hearing all of this, if counsel's legal advice changed at all.

Ms. Hernbrode responded that it does not change. Because the size is of the property is doubled, they are going from a pure purchase to a purchase and development, the properties are not next to each other, and for a whole variety of reasons this is still too different to be an amendment.

Ms. Boland added that, to the extent of these discussions, even if Mr. Travous made promises, it does not change the statute. The statute contemplates competition. This is a brand new project for which there has been no competition for these funds.

Mr. Winkleman noted that if the Board went ahead and did it anyway they run the risk of someone challenging it and that substantial penalties, including the amount of this grant plus 20%, could be incurred.

Ms. Stewart pointed it out that the Board members would be personally liable – it is not just the agency. It is a felony, too.

Ms. Boland stated that she was present at the meeting where this grant was awarded. It was clearly for the London Bridge Beach. They did not have the appraisal. The Land Department did not have the appraisal. The Board said it would give the City this money as a cushion. There was never any discussion by the Parks Board about it going to any other property.

Ms. Stewart added that the Board was not privy to these so-called private discussions; they were never transmitted to the Board. All the Board has to look at is what the City put in writing and applied for. The Board based its decision on London Bridge Beach. It seems to her that, as a public agency, all the Board really have are their reputations and their fairness and integrity in the legality of the process. This is just way off of anything that would be appropriate for the Board to think about doing.

Ms. Hernbrode added that the grant statute requires that identification of the funding source be provided, along with the total amount of available funds, when the Request for Grant Funds is submitted. Before a Request for Grant Application can be sent out, the Board has to know how much money it has.

Mr. Winkleman asked if that means that at this point there is \$0.

Ms. Hernbrode responded that, at this point, there is \$0.

Mr. Winkleman asked if that means that at this point the Board cannot even do another grant cycle.

Ms. Boland responded that if the appraisal review is finished the Board will know what the difference is. That becomes the amount with the caveat that it may be gone.

Mr. Winkleman noted that if the review is finished and the appraised amount holds up, the Board will have about \$1.5 million that could be returned back to SLIF. The statutory minimum is a six-week notice period, with the need for staff to evaluate the applications.

Ms. Stewart added that it still has to go to AORCC and JCCR.

Mr. Winkleman stated that it sound like we're talking six months. If that's the case, that money is at risk of being swept.

Ms. Stewart noted that it is not at risk as long as the file is open.

Ms. Hernbrode noted that there is a distinction between the file being open and the appraisal review being completed. The file does not actually close until Lake Havasu sends staff a letter saying they are finished.

Mr. Winkleman asked at what point the Board could start a new grant cycle.

Chairman Pfister responded that it would typically start now and staff would let people know after the first of the year.

Mr. Winkleman stated he was talking about the requirement that the funds have to be available.

Ms. Hernbrode responded that staff have to identify the funding source and the total amount of available funds. It does not say those funds have to be in-hand.

Chairman Pfister added that it could be an estimate. The Board never really knows exactly how much SLIF money will be available in the next year.

Mr. Porter asked if the Board could put out a call for a grant cycle using the estimate that the Board believes as much as \$1.5 million from returned funds may be available.

Chairman Pfister noted that the Board assumes it will have \$10 million in Heritage Funds. However, sometimes it is much less. Request for Proposals are still sent out long before the Board knows the exact amount of Heritage Fund it will receive.

Ms. Stewart added that the Board already knows it will not pay more than the purchase price of London Bridge Beach.

Mr. Ziemann noted that staff do have a better idea of how much grant money is available. The money that has been accumulated from previous years is granted. Staff do not try to guess what will be received this year. The previous year's money is granted. It is important to have a pretty good idea because the Board's policy of a 20% cap.

Chairman Pfister noted that the cap has been ignored in the past.

Ms. Stewart responded that that has not been the case when there have been 15 applicants.

Mr. Ziemann added that, again, there are no guarantees about any of this with regard to the legislature raiding it. They have raided monies that were encumbered in the past. That will happen again.

Mr. Brian Tassinun, Lake Havasu City Council (lobbyist) addressed the Board. He asked that the Board consider that regardless of the timing of a new grant program (whether it's an extra added grant or timed so that the legislature is not in session) in the end a new grant has to go to JCCR. It is his judgment that the chances of a new grant such as this getting approved by the JCCR are quite low. As the Board considers whether to expand the scope and give this money to Lake Havasu or do a new grant program, he urged the Board to consider that if the money is not given to Lake Havasu today the Board is likely to be giving to the State General Fund.

Ms. Stewart responded that it is her feeling that, given those two choices, the integrity of the grant program and following the competitive grant statute is something the Board simply cannot ignore and that has to come first. The Board must be fair and must follow the law. She does not see, in this particular instance, any room for doing anything other than letting the action the Board took at its last meeting stand. She does not think the Board needs to take any action today.

Mr. Porter stated that he believed he would like to make a motion along the lines of moving that the Board direct the staff to begin the process for a special funding cycle in relation to the potential \$1.5 million returnable from the SLIF Lake Havasu City grant with instructions that when they issue notice that they are to obey the statutory minimum which is six weeks but otherwise to expedite the process as swiftly as possible within the guidelines of the statutes.

Mr. Winkleman stated he would second that motion.

Ms. Stewart stated her concern about that language in terms of whether it will give the appearance or have the effect of making it impossible for others to fairly compete. If the Board is going to do something like that then she believes that the Board must immediately, via E-mail to be followed up by letter, notify every single eligible entity that this is being done. In other words, the Board has to take extraordinary notification efforts if it is going to something at a time it's not normally done and people don't normally expect it. Not only do people who have applied in the past need to be notified, but all municipalities need to be notified. A list should be available from the Department of Commerce.

Chairman Pfister stated she believes staff already have that list.

Ms. Stewart added that it needs to be made clear in this notification that this is a special cycle and that everyone is encouraged to apply. She believes the Board does not want to be seen as doing something to make it difficult for others to fairly compete. That defeats the whole purpose of a competitive grant statute. The Board has to go out of its way to ensure that everyone has an equal opportunity to compete. She is not saying that because of any concern about Lake Havasu City being the awardee; she has seen the property and has no problems with it. However, she is very concerned about the legality and integrity of the process that the Board follows as well as the fairness of it.

Mr. Porter responded that he did not disagree with Ms. Stewart's comments. He does note, however, that the statute specifically says that the Board has a minimum of six weeks. He is simply saying that he wants that minimum applied to the extent to which the Board has the ability to go out and make sure that everyone that might have an interest is aware. He wants nothing more than imminent fairness and he wants compliance with the statute requirements. He also wants to get this process moving. He wants to get it lined up in the hope that in fact the sooner the Board can get to the point possibly the more likely it will be to be able to survive and actually have some applicants.

Ms. Hernbrode stated that she heard Ms. Stewart ask staff to send out, as soon as possible, an E-mail that would say something like, "You will soon be receiving formal notice that we are going to run a special grant cycle. We wanted to let you know so that you could prepare for it." When staff have gotten to the point where they can put out that formal notice, it will be run on a strict six-week timeframe. She asked if that is what both Board members are asking.

Ms. Stewart noted that the Board also has to comply with the other requirements that it go through AORCC and everything else.

Mr. Porter agreed. He stated that, so staff understands, his motion is to try to expedite that process to the maximum possible. He is not asking that anything improper be done. He is asking to move it along and to let AORCC know that once this reaches that point that the Board would like to see this reviewed as swiftly as possible with a recommendation to the Board as swiftly as possible.

Board Action

Mr. Porter: I move that the staff be directed to initiate a Special Grant Cycle based upon the estimated \$1.5 million returned from the SLIF Grant from Lake Havasu City's London Bridge Beach project. In doing so, that we expedite the process as much as possible within the guidelines of the law and, in particular, that the return time period be the statutory minimum of six weeks.

Mr. Winkleman seconded the motion. The motion carried unanimously.

Ms. Stewart asked if it was necessary for a motion on the additional notice.

Chairman Pfister stated she believed staff understood the intent of the Board.

Mr. Porter asked if the Director is comfortable with the motion.

Mr. Travous responded he was.

E. TIME AND PLACE OF NEXT MEETING - The next meeting is scheduled for **November 20, 2003** in Rio Rico, Arizona.

F. ADJOURNMENT

There being no further business to come before the Board, the meeting was adjourned at 12:03 p.m.

Pursuant to Title II of the Americans with Disabilities Act (ADA), Arizona State Parks does not discriminate on the basis of a disability regarding admission to public meetings. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the ADA Coordinator, Nicole Armstrong-Best, (602) 542-7152; or TTY (602) 542-4174. Requests should be made as early as possible to allow time to arrange the accommodation.

Kenneth E. Travous, Executive Director

APPROVED

Suzanne Pfister, Chairman